



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Daniel J. Rendon - Waiver of Overpayment of Salary  
File: B-231018  
Date: August 2, 1989

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### DIGEST

Due to administrative error, an employee received a within-grade increase 1 year before it was expected. In the absence of any mitigating factors, we conclude that the employee knew or should have known the correct waiting period, and we deny his request for wavier.

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### DECISION

This decision is in response to an appeal by Mr. Daniel J. Rendon, filed by his attorney, Mr. Glenn A. Buries, from our Claims Group settlement which denied his request for waiver of an overpayment of compensation in the gross amount of \$946.67 under the provisions of 5 U.S.C. § 5584 (1982 and Supp. IV 1986).<sup>1/</sup> For the following reasons, we affirm our Claims Group's action and deny his request.

### BACKGROUND

Mr. Rendon, an aircraft mechanic with the National Aeronautics and Space Administration (NASA), was promoted on August 10, 1980, from aircraft worker, WG-8, step 3, to a research aircraft mechanic, WG-10, step 2. Under the provisions of 5 U.S.C. § 5343(e)(2) (1982), he was not eligible for a within-grade increase until completion of a 78-week waiting period on February 7, 1982. However, due to an administrative error, he received a within-grade increase on February 7, 1981, and was overpaid at the WG-10, step 3 rate for 1 year in the amount of \$946.67. The error was subsequently discovered and Mr. Rendon has paid back to NASA the proper amount due.

Mr. Rendon contends that our Claims Group erred by failing to consider his position, experience, knowledge and service

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<sup>1/</sup> Z-2880543, Oct. 14, 1987.

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history in denying his waiver request. He also notes that the NASA Inspector General's Report found that there was no fault on his part in its review of the case. The report from the NASA Administrator recommends against waiver on the grounds that Mr. Rendon should have known the applicable periods for within-grade increases since he previously served such a waiting period in a lower grade level.

#### OPINION

The Comptroller General is authorized by 5 U.S.C. § 5584 (1982 and Supp. IV 1986) to waive claims for overpayments of compensation and allowances if collection would be against equity and good conscience and not in the best interests of the United States. Such authority may not be exercised if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee in this case, our decision on the issue of waiver depends on whether Mr. Rendon is found to be at fault.

We consider "fault" to exist if, in light of all the circumstances, it is determined that the individual concerned knew or should have known that an error existed, but failed to take action to have it corrected. Frederick D. Crawford, 62 Comp. Gen. 608 (1983); 4 C.F.R. § 91.5 (1988). In this connection, we have long held that if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, then the employee is not without fault and waiver will be denied. See Herbert H. Frye, B-195472, Feb. 1, 1980; L. Mitchell Dick, B-192283, Nov. 15, 1978.

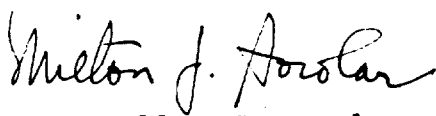
Furthermore, employees generally are expected to be aware of the waiting periods between within-grade or "step" increases and to make inquiry about an increase not in accord with those waiting periods. Dominick A. Galante, B-198570, Nov. 19, 1980; Frye, supra; Dick, supra. In this case, Mr. Rendon received the official notice of his within-grade increase, and we believe that, based on his prior experience, he should have known the proper waiting period for within-grade increases. Therefore, we conclude that Mr. Rendon is not without fault in this overpayment.

In his submission, Mr. Rendon relies on Joyce G. Cook, B-222383, Oct. 10, 1986, for the proposition that an employee is generally not expected to have any specialized knowledge of the payroll system. Cook involved an employee

who improperly received two promotions within 1 year. In that case we found that the desk audit of the employee's position and ambiguous notations on her personnel documents caused her to reasonably conclude that she was entitled to her promotion. No similar mitigating factors are present in Mr. Rendon's case.

Mr. Rendon also relies on Michael A. Uhorchak, B-223381, Apr. 28, 1987, in which an employee with 10 years of federal government service was granted a waiver. However, in Uhorchak we waived an overpayment of pay retention where the employee was erroneously informed by agency officials that he was entitled to "saved pay" and was not counseled as to the financial consequences of his voluntarily requesting a reduction in grade. We believe our decision in Uhorchak, supra, is clearly distinguishable on its facts from Mr. Rendon's case.

Accordingly, we sustain the action of our Claims Group, and we deny Mr. Rendon's request for waiver.

  
for Comptroller General  
of the United States